5.4 LAND CAPABILITY AND COVERAGE LIMITATIONS

In 1980, the State Board determined that limits on land disturbance and impervious surface coverage are necessary to prevent further increases in nutrient loading to Lake Tahoe from erosion and stormwater runoff. These limits are implemented largely through the land capability system and associated land use restrictions and discharge prohibitions. The Tahoe Regional Planning Agency implements a complex set of land coverage rules through the 208 Plan and its regional plan ordinances (TRPA 1987).

A system developed by the USFS in 1971, in cooperation with TRPA, provides a relative quantification of tolerance of land in the Lake Tahoe Basin to human disturbance (Bailey 1974). The Lake Tahoe Basin land capability system should not be confused with the U.S. Department of Agriculture system used to classify the suitability of agricultural lands for growing crops. It should also not be confused with the more recent USFS "Cumulative Watershed Effects" methodology (USFS 1988), which provides a different way to assess the sensitivity of watersheds to disturbance (see the discussion of ski areas later in this Chapter).

The land coverage rules summarized in this section are implemented through land use permits issued by TRPA and local governments, and may be implemented through waste discharge permits issued by the Regional Board.

Land Capability

Factors evaluated in determining land capability classification include geomorphology, hazards from floods, high water tables, poorly drained soils, landslides, fragile flora and fauna, soil erodibility, and slope steepness. All of these factors affect sediment generation from an area following disturbance. The criteria used to assign lands to different land capability classes are shown in Table 5.4-1. The 208 Plan (Vol. I) contains a more detailed discussion of Tahoe Basin soils and geomorphology.

Verification of Land Capability Classifications

TRPA has adopted land capability maps as part of its regional land use plan (TRPA 1987). The U.S. Soil Conservation Service soils maps which form the basis of the land capability maps do not have sufficient resolution to identify soils on parcels which are typically 1/3 acre or less (208 Plan, Vol. I, page 5). Field verification is necessary to determine the true land capability classification of individual parcels or project areas. In its field surveys of more than 12,000 vacant single family residential parcels to assign scores under the Individual Parcel Evaluation System (IPES, discussed below), TRPA has also determined their Bailey land capability classifications. The Bailey land capability system is used for other types of development, and verification of onsite land capability classification under the is done on a project-by-project basis.

TRPA's regional land use plan establishes procedures for "land capability challenges," under which a landowner who believes that the capability of his parcel has been wrongly mapped or field-verified can appeal the classification to TRPA. The TRPA Governing Body may, after reviewing information provided by the landowner's and TRPA's technical consultants, decide to change the land capability classification of the parcel. In some cases, land capability challenges for larger areas may result in amendments to the land capability maps.

While California's water quality control programs include discharge prohibitions related to the land capability system, the State and Regional Boards have not formally adopted TRPA's land capability maps as part of their State water quality plans. Regional Board staff generally accept TRPA's use of these maps and its field verifications of land capability classification, rather than taking the time to do independent field verifications. However, if a technical disagreement occurs, the Regional Board may evaluate the site-specific data independently against the criteria of the Bailey system.

"Man-Modified" Determinations

The 1980 *Lake Tahoe Basin Water Quality Plan* included the concepts that some Stream Environment Zones (SEZs) might have been so altered by human activities that they would no longer function as SEZs, and that under certain circumstances such SEZs could be assigned another land capability classification and allowable impervious surface coverage for development. The

Regional Board reclassified the Tahoe Keys subdivision and some nearby properties under these criteria. TRPA also developed “man-modified SEZ” reclassification procedures. In its 1987 land use plan and 1988 208 Plan, TRPA extended the “man-modified” concept to allow reclassification of the land capability of any parcel which has been so changed by human activities that it now exhibits the characteristics of another class, if certain findings can be made. Thus an originally steep Class 2 parcel which had been disturbed by quarrying might be reclassified to Class 6 or 7. The major impact of such a reclassification would be to increase the allowable “base coverage” (see the discussion of land coverage rules, below).

The Lahontan Regional Board implements discharge prohibitions related to the land capability system and the protection of SEZs, which are similar to but separate from the land use prohibitions implemented by TRPA. (See the discussion of development restrictions later in this Chapter.) The Regional Board must therefore approve “man-modified” reclassifications separately from TRPA. Although TRPA may consider “man-modified” reclassifications as part of its land capability map amendment process, the Regional Board has historically considered them only in connection with discharge permits issued for specific project proposals.

TRPA's process for “man-modified” reclassifications involves TRPA retention of a “team of experts” who “shall be recognized as possessing special qualifications to evaluate soils, landforms, hydrology, and other characteristics of land in the Tahoe Region.” The team may include a geomorphologist, soil scientist, geologist, and hydrologist. TRPA also considers data provided by the applicant's consultants. TRPA's “team of experts” prepares a technical report which addresses factors such as geomorphic characteristics, hydrology, soil characteristics, erosion hazard, and vegetation. The report must also identify the land capability characteristics resulting from the modification and the teams opinion as to the land capability district generally exhibiting those characteristics (TRPA 1987, Ordinance Section 20.2). TRPA's Governing Body evaluates this report and considers whether findings can be made to amend the land capability maps to reclassify the lands in question.

Regional Board staff will generally review “man-modified” reclassifications concurrently with, or following review by TRPA. The Regional Board will independently evaluate the technical information generated by TRPA's “team of experts” and the applicant's consultants, and TRPA's interpretation of project compliance with its required findings. The proposed reclassification of a project site should be evaluated as part of the California Environmental Quality Act (CEQA) document for the project.

“Man-modified” reclassifications of land capability may be approved by the Regional Board only if all of the following findings can be made:

- If the land proposed for reclassification is mapped as a Stream Environment Zone, it was modified before June 11, 1971 (the date of adoption of the Regional Board's prohibitions against discharge to 100-year flood plains and lands below the high water rim of Lake Tahoe and its tributaries). If the land proposed for reclassification is mapped as land capability 1a, 1c, 2, 3, 4, 5, 6, or 7, it was modified before February 10, 1972 (the effective date of TRPA's first land use plan). Evidence of modification, such as historic aerial photographs, must be supplied by the applicant; and

- Further development or modification will not exacerbate the water quality-related problems resulting from the modification of the land and will not adversely impact sensitive lands (e.g., high erosion hazard lands or SEZs) adjacent to or nearby the man-modified area; and

- The land no longer exhibits the characteristics of land bearing the same, original land capability classification; and

- Restoration of the land to its original land capability is infeasible. (Factors to be used by the Regional Board in determining feasibility may include, but need not be limited to: the cost of restoration, the potential achievement of a more positive cost-benefit ratio by offsite restoration, environmental harm which could be caused by onsite restoration, interference by onsite restoration with an existing legal use, and whether or not the land is identified for restoration, e.g., in the 208 Plan SEZ Restoration Program.) and

- Further development or modification of the

reclassified site can be mitigated offsite; and

- Mitigation will be implemented to offset the losses in water quality protection caused by modification of the land and pertinent land capability district. This mitigation should be implemented both onsite and offsite, and should include a schedule of maintenance.

Separate procedures for "man-modified" reclassification of 100-year floodplains and shorezone areas by the Regional Board and TRPA are discussed in the sections of this Chapter on floodplain and shorezone protection.

Individual Parcel Evaluation System (IPES)

The IPES is an alternative to the Bailey land capability system adopted as part of TRPA's 1987 regional land use plan, which ranks vacant single family parcels in relation to their potential to create water quality problems if developed. The IPES applies **only** to vacant single family residential parcels; the Bailey land capability system is used to evaluate modifications of already developed single family parcels and new or modified development of all other types.

TRPA has established an initial numerical score, the "IPES line" (725 out of a possible 1150 points), separating more sensitive from less sensitive parcels. Parcels with scores above the line may be built upon if the owner receives a development "allocation." TRPA currently limits allocations for new single family homes to about 300 per year in the Lake Tahoe Basin as a whole, in order to phase development in relation to accomplishment of its mitigation programs for all of the environmental impacts of development, including water quality impacts. (See the discussions of offset programs and development restrictions later in this Chapter.) Local governments may distribute allocations on a first come-first serve basis or by some other process such as a random drawing. If the criteria discussed below are met, TRPA may consider allowing the "line" between buildable and unbuildable parcels to move downwards to allow development of more sensitive parcels. IPES rankings are not exactly equivalent to land capability classifications; some lots mapped in land capability Classes 4-7 have received IPES scores below the line, and some land capability Class 3 lots have received IPES scores above the line.

Although the review of single family home projects in the Lake Tahoe Basin was delegated to TRPA in the 1989 amendments to the *Lake Tahoe Basin Water Quality Plan,* the State and Regional Boards have a continuing interest in the protection of Class 1-3 lands. See the section of this Chapter on development restrictions for discussion of the applicability of discharge prohibitions to development under the IPES.

The State Board's certification of the 208 Plan (Resolution 89-32) includes the condition that:

"TRPA will notify the State Board 90 days in advance of a proposed change in the Individual Parcel Evaluation System (IPES) line. Upon notification of a proposed move in the IPES line, the State Board will assess the reasonableness of progress being made toward meeting the revised 208 Plan's Thresholds and interim targets and in accordance with its responsibilities as a certifying agency under Section 208 of the Clean Water Act, make a determination regarding continued State Board certification of the revised 208 Plan."

Technical details on procedures for establishing IPES scores and moving the IPES line are provided in TRPA's Ordinance Chapter 37. The following is a summary of information on the IPES from the 208 Plan (Vol. I, page 116).

The IPES score of a given parcel is established based on the following criteria: (1) relative erosion hazard, (2) runoff potential, (3) degree of difficulty to access the building site, (4) water influence areas, (5) condition of the watershed, (6) ability to revegetate, and (7) the need for water quality improvements in the vicinity of the parcel. A property owner may increase the rating of a parcel, to a limited and finite degree, by constructing offsite water quality improvements. TRPA must approve any such water quality improvement projects; a project must be located off-site, and must be completed prior to the construction of the single family dwelling.

IPES scores are determined by a TRPA "team of experts" who conduct field evaluations using a

standardized approach. If part of the parcel is SEZ, the process includes consideration of the area of land outside the SEZ which is available for construction. Depending upon the size of the parcel, the IPES team or the property owner may select the best building site. Property owners may appeal a parcel's rating to an independent body of qualified experts not involved in the initial field evaluation of that parcel. These independent experts shall apply the IPES criteria, and their decision shall be final unless the property owner appeals to the TRPA Governing Board. The Board may change a rating only upon finding that the IPES criteria were not applied correctly. The 208 Plan includes procedures to adjust the IPES line if appeals result in significant increases in the number of parcels above the line in a given jurisdiction.

The numerical level defining the top rank for any jurisdiction (County or City) shall be lowered annually by the number of allocations utilized in that jurisdiction during the previous year provided that the following conditions are met:

- all parcels in the top rank are otherwise eligible for development under state water quality plans and other legal limitations, and

- a monitoring program for that jurisdiction is in place as set forth in the Monitoring and Evaluation Subelement of the TRPA Goals and Policies (TRPA 1987), and

- demonstrable progress is being made on the Capital Improvements Program for water quality within that jurisdiction, and

- there is a satisfactory rate of reduction in the inventory of vacant parcels, (the IPES line shall not move down in any jurisdiction unless the number of parcels below the line in that jurisdiction, compared to the number deemed sensitive on January 1, 1986, does not exceed 20 percent in El Dorado and Placer Counties, or 33 percent in Washoe and Douglas Counties), and

- the level of compliance with conditions of project approvals within that jurisdiction is satisfactory.

With respect to the requirement that a monitoring program shall be in place in a given jurisdiction, TRPA will monitor stream flows and concentrations of sediment and nutrients in representative tributaries to determine annual pollutant loads. This information will provide a basis for evaluating the relative health of the watershed within which development is contemplated and progress toward meeting environmental threshold carrying capacity standards.

The 208 Plan, as amended, requires that this monitoring program shall be in place in a local jurisdiction, and shall characterize water quality conditions, before the IPES line is lowered. The term “in place” means that a TRPA-approved monitoring system, with established procedures and responsibilities, is physically located on the selected tributaries, and samples have been collected and analyzed for the previous water year. The monitoring program, to be effective, should remain in place on a continuing and long- term basis. TRPA intends to collect, on a long-term basis pursuant to stringent QA/QC [quality assurance/quality control] procedures, improved tributary water quality data which will be used to better assess average and existing conditions and to understand water quality trends and compliance with state and federal water quality standards.

The location of IPES monitoring program sampling sites, the frequency of sampling, and financial responsibilities will be set forth in TRPA's Monitoring Program, based on the recommendations of the TRPA Monitoring Committee (see the general discussion of monitoring at the end of this Chapter). The objectives of the IPES monitoring program are to:

(1) Characterize the water quality of streams draining affected residential areas in relationship to the overall water quality observed in the watershed,

(2) Identify short-term changes in water quality from affected residential areas, and

(3) Ensure that TRPA and state water quality standards are being attained and maintained.

The IPES monitoring program will include QA/QC procedures to ensure that the data accurately represent the actual water quality conditions. Monitoring will normally occur not only at the mouths of streams, but also at locations in closer proximity to residential subdivisions. While the stream mouth

monitoring will generally cover the entire year, monitoring at other locations higher in the watershed will be geared toward the spring snowmelt period and the fall storm season to contain costs. In addition to the monitoring stations established at the time of 208 Plan adoption in 1988, TRPA estimates that 30 to 40 additional IPES monitoring stations will be required throughout its jurisdiction (208 Plan, Vol. I, page 119).

To determine that demonstrable progress is being made on the Capital Improvements Program (CIP) within a given jurisdiction, TRPA will consider progress under both the CIP and the SEZ Restoration Programs (208 Plan Volumes III and IV). TRPA has established benchmarks against which the progress can be evaluated (see the discussion of compliance schedules earlier in this Chapter). TRPA will review the progress of a given jurisdiction over a three-year period covering the previous year, the current year, and the upcoming year. For the demonstrable progress criteria to be met, TRPA must make one of the following findings: (1) funding is committed and there is a strong likelihood that construction will commence on one or more high priority watershed improvement projects in the current or upcoming year, and construction of one or more high priority projects has taken place in the previous or current year, or (2) the performance of the local jurisdiction on implementation of SEZ restoration and capital improvement projects is consistent with progress necessary to meet the established benchmarks. In this context, the term “high priority project” means a project with a substantial water quality benefit.

To determine whether the level of compliance in a jurisdiction is satisfactory, TRPA will evaluate:

1. The percentage of projects which commenced construction three or more years earlier but which have not had their securities returned for water quality related practices (TRPA collects securities for projects which it permits in order to ensure implementation of conditions of approval);

2. The number of projects which are behind schedules in project approvals for BMP retrofit;

3. The number of projects which required TRPA issuance of cease and desist orders for failure to observe conditions of approval within the previous fiscal year, as compared to the number of projects inspected, and

4. The number of projects on which violations remain unresolved, compared to the number resolved.

For TRPA to approve a project under IPES, the parcel must be served by a paved road, water service, sewer service, and electric utility. However, Chapter 27 of the TRPA Code of Ordinances sets forth provisions for waiver of the paved road requirement.

TRPA has assigned IPES scores to most vacant single family parcels within its jurisdiction; some of these scores are still being appealed. Following adoption of the 208 Plan, TRPA began discussion on whether conditions for movement of the IPES line had been satisfied in Douglas County, Nevada. The discussion group, which included the Regional Board's Executive Officer, developed more detailed performance criteria for evaluation of the conditions. No movement of the IPES line has yet been approved by TRPA in California.

Regional Board staff should continue to participate in TRPA-sponsored discussions, and to review written TRPA proposals, regarding any changes in the IPES criteria or movement of the IPES line. If and when movement of the line is proposed in California, Regional Board staff should independently review the proposal and advise the Regional Board and State Board staff regarding possible recommendations to the State Board on reconsideration of certification of the 208 Plan, pursuant to State Board Resolution 89-32.

Coverage Limitations

Projects permitted by the Regional Board and TRPA must comply with the limitations on land coverage outlined below. In amending the *Lake Tahoe Basin Water Quality Plan* in 1989, the State Board endorsed the following land coverage rules from Volume I of the 208 Plan. TRPA's Code of Ordinances, Chapter 20 (TRPA 1987) provides more detailed information on coverage rules and calculations affecting specific circumstances.

Base Coverage Limits

Each land capability class is assigned a single numerical value representing the percentage of the land surface which may be covered with impervious surface without substantial damage to the land. These coverages are listed in Table 5.4-2. (Note that although the original Bailey land capability system assigned 1% coverage to class 1b, or Stream Environment Zone (SEZ) lands, **no** new coverage or permanent disturbance is currently permitted in SEZs unless specific exemption findings can be made; see the "Development Restrictions" section of this Chapter). The land coverage rules allow transfer of the assigned 1% coverage for use out of the SEZ under some circumstances. The land capability system also specifies that high erosion hazard lands in capability classes 1 and 2 are not suited to urbanization and should be left in their natural state.

Before 1980, most of the development in the Lake Tahoe Basin did not comply with the land capability system. Most of the subdivisions in the Basin were built before regional planning agencies adopted ordinances implementing the land capability system. This lack of conformance to land capability has contributed significantly to water quality problems. Modeling of 19 watersheds by State Board staff in 1980 showed a high correlation among sediment yield, land capability, and degree of disturbance. In 1980, the State Water Resources Control Board adopted a prohibition against discharges or threatened discharges attributable to new development which is not in compliance with the land capability system.

In 1982, TRPA adopted an "environmental threshold carrying capacity" management standard for soil conservation which provides that:

"Impervious surface coverage shall comply with the ***Land Capability Classification of the Lake Tahoe Basin, California-Nevada, A Guide for Planning (Bailey 1974)."***

The 1987 TRPA regional land use plan and the 1988 208 Plan set forth a complex set of rules for application of the land capability system to determine allowable impervious surface coverage for new and existing development. The 1987 TRPA Regional Plan assigns coverage to vacant single family residential lots according to their numerical scores under an Individual Parcel Evaluation System (IPES). The TRPA Regional Plan also assigns an allowable "base coverage," reflecting the Bailey limits or the IPES criteria, to each commercial, tourist, recreational, or residential parcel, and allows coverage exceeding land capability system limits on some parcels in exchange for the retirement or restoration of coverage elsewhere in the same "Hydrologically Related Area" (Figure 5.4-1). TRPA considers the implementation of these Regional Plan provisions to be in conformance, on a regionwide basis, with the Bailey land capability standard.

The 208 Plan (Vol. I, page 121) provides that allowed "base coverage" for all new projects and activities shall be calculated by applying the Bailey coefficients to the applicable area within the parcel boundary, or:

- for subdivisions previously approved by TRPA in conformance with the Bailey coefficients, coverage assigned to individual lots shall be the allowed base coverage,

- for (previously approved) planned unit developments not in conformance with the Bailey coefficients, the coefficients shall apply to the entire project area minus public rights-of-way, and the allowed base coverage shall be apportioned to individual lots and common area facilities,

- for parcels evaluated under the IPES, the allowable base land coverage shall be a function of the parcel's combined score for relative erosion hazard and runoff potential, as correlated with the Bailey coefficients and applied to the evaluated area. Figure 5.4-2 is a graph showing allowable coverage in relation to IPES scores.

The allowed base coverage may be increased by transfer of land coverage within hydrologically related areas (Figure 5.4-1) up to the limits set forth in Table 5.4-3. Special provisions for additional coverage, such as for exceptionally long driveways and handicapped access, may also be allowed by TRPA ordinance.

In addition to the limitations on land coverage above, the 208 Plan (Vol. I, page 121) provides that no new land coverage or other permanent disturbance shall be allowed in land capability districts 1, 2, or 3, except as follows:

- For single-family dwellings reviewed and approved pursuant to the IPES
- For public outdoor recreation facilities if certain findings can be made
- For public service facilities if certain findings can be made.

TRPA's exemption findings for public outdoor recreation and public service projects on Class 1-3 lands are similar to those required for SEZs. TRPA requires the proponents of such projects to fully restore Class 1-3 lands in an amount 1.5 times the area disturbed or developed beyond that permitted in the Bailey coefficients. The 1.5:1 restoration requirement can be accomplished onsite or offsite, and is in lieu of coverage transfer or excess coverage mitigation provisions elsewhere in TRPA's Regional Plan. Onsite mitigation in the form of implementation of Best Management Practices is still required. (See the section on "Development Restrictions" below for a more detailed discussion of required Regional Board findings in connection with discharge prohibitions related to disturbance of high erosion hazard lands.)

Excess Coverage Mitigation

As noted above, existing impervious surface coverage in the Lake Tahoe Basin far exceeds allowable coverage in most developed areas, particularly in SEZs. TRPA has adopted an excess coverage mitigation program, which is described in the 208 Plan (Vol. I, pages 111-112) and summarized below. The Regional Board generally relies on TRPA to implement this program. If the Regional Board finds that TRPA is not providing for excess coverage mitigation according to the criteria below, the Board reserves the right to require such mitigation in waste discharge permits. Existing coverage in excess of the land capability system limits which has been fully mitigated, or which is exempt according to the criteria below, is not considered to be in violation of the Regional Board discharge prohibitions related to land capability (see the section of this Chapter on development restrictions).

Where rehabilitation or modification projects are approved on parcels with existing coverage in excess of the Bailey coefficients ("excess coverage"), a land coverage mitigation program shall provide for the reduction of coverage in an amount proportional to the cost of the project and the extent of excess coverage. To accomplish these reductions, property owners may (1) reduce coverage onsite; (2) reduce coverage offsite within the hydrologically related area (Figure 5.4-1); (3) in lieu of coverage reduction, pay an excess coverage mitigation fee to a land bank established to accomplish coverage reductions; (4) consolidate lots or adjust lot lines; or (5) any combination of the above. These programs are expected to achieve significant reductions in existing coverage. (Other programs such as the coverage transfer system discussed below, land acquisition and restoration programs by public agencies, and the bonus incentive program in TRPA's Ordinance Chapter 34 will also help to reduce excess coverage.)

Certain types of projects are exempt from excess coverage mitigation requirements, including: projects on parcels where the coverage has already been mitigated; repair and reconstruction of buildings damaged by fire or other calamity; installation of erosion control facilities; restoration of disturbed areas; SEZ restoration; underground storage tank removal, replacement, or maintenance; hazardous waste spill control or prevention facilities; sewage pumpout facilities; and repairs to linear public facilities. (The TRPA Regional Plan defines "linear public facilities" to include pipelines and power transmission facilities, transmission and receiving facilities, transportation routes, and transit stations and terminals.)

TRPA sets excess coverage mitigation fees according to guidelines in its regional land use plan (TRPA 1987). The fee schedule must provide a reasonable level of funding for the land bank, must not unduly restrict or deter property owners from undertaking rehabilitation projects, and must carry out an effective coverage reduction program.

Coverage Transfer

Within limits, impervious surface coverage for a specific project may be increased beyond the base coverage allowance through transfer of existing or potential coverage from another parcel. Maximum

allowable coverage with transfer is summarized for various types of development in Table 5.4-3. The Regional Board generally relies on TRPA to implement the coverage transfer program. If the Regional Board finds that TRPA is not following the procedures described below, the Board reserves the right to require compliance with these criteria in waste discharge permits.

Land coverage may be transferred within hydrologically related areas (Figure 5.4-1). The intent of the coverage transfer provisions is to allow greater flexibility in the placement of land coverage within hydrologically related areas, using land banks, lot consolidations, land coverage restoration, and transfers. The coverage transfer provisions allow for coverage in excess of base coverage to be permitted and still be consistent with Regional Board discharge prohibitions related to land capability and with TRPA's environmental threshold standards (see the section of this Chapter on development restrictions).

Coverage transfers for commercial and tourist accommodations projects shall be existing hard coverage (i.e., man-made structures) except where TRPA finds that there is an inadequate supply at a reasonable cost within the hydrologically-related area. In such a case, TRPA may increase the coverage supply in this order of priority: (1) by allowing transfer of existing soft coverage, i.e., compacted areas without structures, (2) by allowing transfer of potential coverage, i.e. base allowed coverage, and (3) by redefining the hydrologic boundaries within which transfers can occur. (Regional Board staff should review and evaluate the potential water quality impacts of any TRPA proposals to increase the coverage supply; the Regional Board may wish to make formal recommendations to TRPA regarding such proposals.)

Coverage transfers for residential, outdoor recreation, public service, regional public facility and public health and safety projects may utilize either existing coverage or disturbance or potential coverage. Transfer for linear public facility projects shall have the option of transferring existing hard or soft coverage.

The 208 Plan (Vol. I, page 127) directs that a land coverage banking system be established to facilitate the elimination of excess land coverage and to provide transfer mechanisms. As of 1993, the California Tahoe Conservancy served as a land bank on the California side of the Tahoe Basin; and TRPA was seeking establishment of a Nevada-side land bank. Private coverage transactions are also allowed in both states.

Under the 208 Plan, coverage transfers are subject to the following qualifications and constraints:

- coverage transfers shall be at a ratio of 1:1 or greater, and
- coverage transferred for a single family house shall be from a parcel equal to, or more environmentally sensitive than, the receiving parcel, and
- in the case of parcels containing an SEZ, the amount of coverage attributable to the SEZ portion may be transferred to the non-SEZ portion or may be utilized in the SEZ pursuant to the access provisions of the SEZ policies.

In connection with a transfer of land coverage, the transferor lot shall be appropriately restricted and restored to a natural or near natural state. All transfers must be approved by the affected local government jurisdictions.

TRPA cannot approve coverage transfers into community plan areas until it adopts community plans which must include schedules for implementation of remedial water quality projects that achieve applicable goals and water quality standards (208 Plan, Vol. VI, page 51).

Transfers of soft coverage (denuded and compacted areas without structures) are allowed only where the soft coverage was established legally. Thus transfer of soft coverage does not constitute a disincentive to rehabilitate disturbed areas, since legally established soft coverage can, and should be legally paved. To have been legally established, soft coverage must be established prior to the adoption of TRPA's first regional land use plan in 1972, and compacted such that 75% of normal precipitation runs off the surface. (208 Plan, Vol. VI, page 53).

The following additional criteria should be used to verify the existence of legal soft coverage:

- The site should have been in continuous use since 1972.

- In addition to the use of historical aerial photographs, a site inspection should be done to verify existing conditions, including the rate of infiltration.

- The disturbed area should be associated with a legally established land use (e.g., an unpaved driveway for an existing house, or the shoulder of an existing road).

Coverage transfers may occur in association with other types of transfer of development rights (see the discussion below).

Occasionally TRPA encounters a parcel which is otherwise eligible for a permit for a single family house, but on which the building site with the least impact on the land is far from the street. In return for sacrificing up to 400 square feet of otherwise available land coverage, and upon a finding that the direct result of the increased coverage is to locate the house on the site with the least impact on the land, TRPA will allow extra land coverage by transfer (208 Plan, Vol. VI, page 105).

New linear public facilities, public health and safety facilities, and access for the handicapped may utilize coverage transfer programs to achieve coverage which is the minimum needed to achieve their public purpose. Repairs to linear public facilities are exempt from excess coverage mitigation requirements. Linear public facilities which create additional land coverage must offset the water quality impacts of that additional coverage, although impervious coverage permitted as a result of transfer of coverage is exempt from water quality mitigation fee requirements (see also the sections of this Chapter on roads and rights-of-way, and on development restrictions).

Coverage Relocation

In addition to transfer of coverage between parcels, existing coverage may be relocated on the same parcel or project area if the following findings can be made:

- The relocation is to an equal or superior portion of the parcel or project area, as determined by reference to the following factors:

  (a) Whether the area of relocation already has been disturbed

  (b) The slope of and natural vegetation on the area of relocation

  (c) The fragility of the soil on the area of relocation

  (d) Whether the area of relocation appropriately fits the scheme of use of the property

  (e) The relocation does not further encroach into a Stream Environment Zone, backshore, or the setbacks established in TRPA's Code of Ordinances for protection of SEZs or backshore

  (f) The project otherwise complies with the land coverage mitigation program set forth in TRPA's Ordinance Section 20.5, and

- The area from which the land coverage was removed is restored in accordance with TRPA's Ordinance Section 20.4.C., and

- The relocation is not to Land Capability Districts 1a, 1b, 1c, 2 or 3, from any higher numbered land capability district, and

- If the relocation is from one portion of a SEZ to another portion, there is a net environmental benefit to the SEZ. Net environmental benefit to the SEZ is defined as an improvement to the functioning of the SEZ and includes, but is not limited to:

  (a) Relocation of coverage from a more disturbed area or to an area further away from the stream channel

  (b) Retirement of land coverage in the affected SEZ in the amount of 1.5:1 of the amount of land coverage being relocated within a SEZ, or

(c) For projects involving the relocation of more than 1000 square feet of land coverage within a SEZ, a finding, based on a report prepared by a qualified professional, that the relocation will improve the functioning of the SEZ and will not negatively affect the quality of existing habitats.

The Regional Board generally relies on TRPA to ensure that coverage relocation complies with the criteria above. If the Regional Board finds that TRPA is not fully implementing these criteria, the Board reserves the right to review projects involving relocation of coverage in accordance with the language included in this Basin Plan. The Regional Board may also determine that site specific or project-specific water quality impacts or issues warrant its review of coverage relocation separately from TRPA. Details of the types of projects to be reviewed by the Regional Board will be worked out through an implementation agreement with TRPA.